

EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL YOU ARE TOLD TO BEGIN.

THIS EXAM WILL LAST 3 HOURS. Part I is a CLOSED BOOK EXAM. It will last from 9 a.m. until 10:30 a.m. At 10:30 a.m. I will collect all of the exams. If you finish ahead of time you may read Part II (Question 3) and make notes but you may not begin writing your answer to it.

Part II is a modified OPEN BOOK exam. It will last from 10:30 a.m. until 12:00 p.m. You may use any notes you have made yourself, your textbook, the statutory supplement (West's Commercial Law Statutes) and any outlines that I have distributed to you. YOU MAY NOT use any commercially printed outlines, hornbooks, treatises, articles, etc., except that you may use up to 50 pages photocopied from such materials.

While waiting for the exam to begin, be sure that you have written your EXAM NUMBER on each bluebook, that you have read these instructions, and that you are otherwise ready to begin. For each of the questions, START A NEW BLUEBOOK.

POINTS are assigned based upon the rough number of minutes it should take to complete each section. The division is as follows:

Part I	Question 1:	70 points
	Question 2:	15 points
Part II	Question 3:	85 points
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	TOTAL	170 points

For purposes of this exam, assume that you and your clients are located in the State of Linden, and that Linden has adopted all of the Uniform Acts (including the Uniform Consumer Sales Practices Act and the Uniform Consumer Credit Code) that are contained in your statutory supplement.

GOOD LUCK!

HAVE A MERRY CHRISTMAS AND/OR HAPPY HOLIDAYS!

PART ONE: CLOSED BOOK

QUESTION 1 (70 points)

Beginning in 1989, Andrew Johnson ("Johnson") owned and operated Electro Image, a computer graphics business in Tyler, Linden. Electro Image is a service bureau that accommodates advertising agencies and corporate graphics departments that need high caliber art work on printed materials, such as sales brochures.

Innovative sells and services office equipment. In January, 1991, Innovative's Regional Sales Manager, Mike Dobbins ("Dobbins"), convinced Johnson to enter into a long-term lease for a new Canon color laser copier ("CLC-200"). Johnson used the Canon CLC-200 solely as a color copier. To produce high quality color graphics, Johnson created the original art work in black and white, colored the black and white graphic by hand, and reproduced the original on the multi-color copier. Although Johnson considered this method undesirable, he was not aware that a more efficient, fully computerized color machine was available on the market.

In July 1991, the ceiling of Johnson's building fell on top of the CLC-200. Johnson contacted Innovative and began a series of conversations with Dobbins that resulted in Dobbins proposing that Johnson upgrade his equipment to an interfaced computerized color printing system. The system Dobbins proposed included an upgraded copier, the Canon CLC-500 copier, an independent processing unit, a memory board, and a software package that was new on the market called SuperPrint.

The key component of the proposed upgraded system was the SuperPrint software program. Using the special software, the proposed system would enable Johnson to design an image directly on the computer screen and the CLC-500 copier would serve as a printer and reproduce the color graphic image. By upgrading to a new, more expensive color copying system, Johnson reasoned that he could eliminate the time intensive step of creating the original art work by hand, which would allow him to produce high quality graphics on a more affordable basis.

Johnson had reservations and concerns about the upgraded system, and Dobbins referred Johnson to Innovative President, Harry Farnham, ("Farnham"). Farnham had an "almost unlimited hardware capability" to determine the viability of any software that was new on the market. As part of his expertise, Farnham gave feed-back to developers of software, such as Canon, on the effectiveness of any new software that entered the market.

To ensure that Innovative understood Johnson's expectations for the proposed new system, Johnson gave Dobbins a list of nine specifications of the factors that were important to Johnson if Johnson were to decide to upgrade his system. In turn, Dobbins gave all of Johnson's specifications to Farnham so that "[Farnham] would know exactly where we would be going with the software." The nine specifications that Johnson considered important were: 1 .

1. The system had to be an integrated solution from one vendor;
2. The system had to operate on Windows 3.0;
3. The system had to enable the color laser copier as a scanner;
4. The system had to produce PostScript output;
5. The system must operate on Johnson's computer, an IBM PS/2 platform;
6. The system had to work with Johnson's large library of PostScript Type I fonts;
7. The system must be suitable for a service bureau clientele and accept digital input from other IBM programs using industry standard formats;
8. The software solution must be upgradable should better hardware solution enter the market, and;
9. The system had to be cost effective.

Johnson was satisfied with the performance of his CLC-200 copier; therefore, the upgrade to the CLC-500 was only attractive to him if there was a workable software solution to make his output less time consuming and more affordable. Realizing this, Farnham sent Johnson approximately 100 pages of information on the new SuperPrint software program, including a flyer which made the following representations:

- Get maximum effectiveness from your Canon color laser copier
- Maximum speed
- Maximum resolution
- Maximum connectivity
- Maximum return on your investment
- SuperPrint is a software solution to Windows lack of support for color devices [and] printing quality and speed
- SuperPrint is the best solution for printing to Canon Color Laser Copiers directly from such popular applications as CorelDRAW! [a graphics software used by Johnson]
- SuperPrint generates scalable screen and printer fonts on-the-fly
- Service bureau printing
- Get fast throughput
- Attract more customers who use Windows applications
- Reduce headaches with easy to use page description files
- Maximize the return on your investment in Canon equipment.

In reliance on the representations that the proposed system would, at a minimum, satisfy Johnson's nine basic specifications, Johnson signed a 65-month lease on the upgraded hardware.

In September, 1991, Dobbins paid Johnson's expenses to attend a color laser copier software product fair and training seminar. At the software show, Johnson, Dobbins, and Farnham saw a demonstration of the software that would be compatible with Johnson's new system. The demonstration included two software packages, Colorbus and SuperPrint 3.0/Z-Script. Johnson testified that the demonstration was impressive and looked like everything Dobbins had told him it was going to be. He watched examples of the system's output and was furnished with samples of the output after the demonstration. One sample stated: "Printed to the Canon Color Laser Copier 500 PostScript interpreted by Zenographics SuperPrint Distributed by Colorbus."

That same day, Farnham and Dobbins introduced Johnson to Paul Peffer, a representative of Colorbus. Peffer informed Johnson that the SuperPrint 3.0/Z-Script that had been demonstrated was not available at the show because the packaging and the instruction manual for the software had not been completed. Although the SuperPrint 3.0/Z-Script was not available, Peffer told Johnson that he could get the SuperPrint 2.0 software, which would produce a lower grade, but similar output as the SuperPrint 3.0/Z-Script. If Johnson agreed to order the 2.0 SuperPrint software, Peffer agreed to give Johnson a good price and agreed to ship the SuperPrint 3.0/Z-Script to Johnson "the minute that it was available" at no additional charge. Peffer represented to Johnson that the SuperPrint 3.0/Z-Script would be available in November of 1991.

At the conclusion of their discussion, Colorbus sold the software to Innovative, which then leased it to Johnson. The order form for the software was attached as a supplement to Innovative's original lease. The lease, as supplemented, attempted to obligate Johnson to make 65 monthly payments totaling \$96,876.00.

As Dobbins prepared the order form, Johnson discussed with Peffer the details of the manner in which the software would be adapted to Johnson's equipment. Peffer told Johnson that Innovative would install the software and would be Johnson's sole source of technical support for the system. After hearing Peffer's representations to Johnson that Innovative would be responsible for assembling, troubleshooting, and repairing Johnson's system, Dobbins decided to confirm Peffer's statement with Farnham. Thereafter, Dobbins told Johnson, "Harry [Farnham] has agreed. [Innovative is] going to take care of the whole works. We'll take care of you, Jim."

In October 1991, Johnson received the SuperPrint 2.0 software. When Johnson called Dobbins and requested that Innovative install his new equipment, Dobbins told Johnson to call Farnham to find out who was going to put the system together. Farnham told Johnson that it would probably be better if Johnson put it together himself. After Johnson protested, Farnham advised Johnson to contact a representative of Colorbus for assistance.

Johnson eventually assembled the system, but nothing worked except for the CLC-500, which he used only as a color copier. Again, Johnson called Farnham and Farnham agreed to

send some Innovative technicians to assist Johnson. The technicians discovered that the cable provided by Innovative had been miswired. After a new cable was installed, Johnson's system still would not work. Again, Farnham advised Johnson to contact Colorbus. Johnson contacted Ruben Gooch with Colorbus, who confirmed various settings with Johnson. Johnson made the recommended adjustments, but the system still would not operate.

Innovative then sent its software expert, Jeff Woiton, to assist Johnson with the system. Woiton discovered that the hardware was defective, that a memory board was missing, and that another adjustment had to be made to the hardware. After two new memory boards were delivered, Johnson attempted again to make the new system operational.

The system never produced output at the level that had been demonstrated. At the software show demonstration, the proposed new process took only 12 minutes for the first copy, and thereafter, the machine would produce several copies per minute. After spending "hundreds of hours" between October 1991 to January 1992 in an attempt to make the system work, Johnson finally "threw in the towel," stating that he worked as much as he could "without totally destroying [his] business." Shortly thereafter, Johnson began having medical problems and was treated for an ulcer.

Forget statute of limitations issues. Using only the theories of recovery and remedies that we have talked about in the course of the semester, please outline your assessment of whether or not Johnson has a viable claim against Innovative.

QUESTION 2 (15 points)

You are a legislative aide to United States Senator Lincoln, who is a member of the Senate Judiciary Committee. The Senate is considering new consumer legislation, and you have been assigned to evaluate a staff proposal that would outlaw credit life insurance. Would you support such a proposal? Why or why not?

PART II: OPEN BOOK

QUESTION 3 (85 points)

U.D. Registry, Inc. ("UDR") gathers information regarding residential renters and sells that information to its subscribers, mainly landlords and their agents. The information comes from public records of unlawful detainers, forcible detainers, property damage cases, foreclosures, bankruptcies, and the like. UDR also solicits information from its subscribers, providing forms on which they are requested to describe each tenant, his or her treatment of the premises, and other behavior relevant to the tenancy. This information is then passed on to other subscribers screening applicants to fill a vacancy.

Although what UDR does is similar to the task of a conventional credit agency, there are significant differences. A credit agency's data typically comes from credit and loan documents which contain ample information to identify the person involved, such as social security number, driver's license number, previous addresses, and spouse's name. UDR relies primarily on court files which contain little identifying information, usually just a name and possibly an address. When a subscriber calls UDR to obtain a report on a prospective tenant, the operator brings up all the information contained in the computer under that name. In many instances, the information available to the operator is not sufficient to determine whether or not the prospective tenant about whom the inquiry is being made is tied to the information appearing on the screen. If the operator did not have sufficient information from which to determine a definite match, the operator told the subscriber what there was under the name, and suggested that the subscriber make further inquiries to determine if it was the same person. This kind of match was known as a "possible." When a tenant requested disclosure of his or her file, UDR disclosed only the information definitely matched to the person making the request, not the information "possibly" related. UDR instructed its subscribers not to tell tenants or prospective tenants what UDR had reported.

A Linden statute prohibits the reporting of unlawful detainer actions where the person against whom the action was filed was "adjudged the prevailing party." (Lind.Civ.Code, § 1785.13, subd. (a)(4) (Stats.1982, ch. 1127, § 4.) In accordance with its interpretation of this statute, UDR reported all unlawful detainer actions resolved in any way other than by adjudication after trial or summary judgment for the defendant, including, in at least some instances, actions resolved by demurrer, dismissal for failure to prosecute, and settlement. These reports were noted, "not adjudicated as the prevailing party."

You are a new attorney in a law firm; your senior partner has given you a summary of an interview with two families who were turned down from rental housing because of adverse information collected and disclosed to prospective landlords by UDR. The families would like to know if they have any remedy. What would you tell them?